

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
ACA Petition for Rulemaking to Amend	)	RM No. 11203
47 C.F.R. §§ 76.64, 76.93, and 76.103	)	
	)	
Retransmission Consent, Network Non-	)	
Duplication, and Syndicated Exclusivity	)	

**COMMENTS  
of the  
ORGANIZATION FOR THE PROMOTION AND  
ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES**

**I. INTRODUCTION**

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these comments in response to the proceeding<sup>1</sup> on the American Cable Association's (ACA's) above-captioned Petition for Rulemaking<sup>2</sup> to adjust the current broadcast exclusivity and retransmission consent regulations. OPASTCO is a national trade association representing approximately 560 small incumbent local exchange carriers (ILECs) serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 3.5 million customers. All OPASTCO members are rural telephone companies as defined in 47 U.S.C. §153(37).

---

<sup>1</sup> *Consumer and Government Affairs Bureau, Reference Information Center, Petition for Rulemaking Filed, Public Notice, Report No. 2696, DA 05-105 (rel. Mar. 17, 2005).*

<sup>2</sup> *Petition of the American Cable Association for Rulemaking to Amend 47 C.F.R. §§ 76.64, 76.93, and 76.103; Retransmission Consent, Network Non-Duplication, and Syndicated Exclusivity, MB Docket No. \_\_\_ (fil. Mar. 2, 2005) (Petition).*

Video services are an increasingly important aspect of OPASTCO members' service offerings. In addition to serving as ILECs, approximately half of OPASTCO members serve as cable companies. An increasing number of members offer video services using digital subscriber line (DSL) technology, in some cases competing directly against large cable companies. Some OPASTCO members have deployed fiber to the home in an effort to offer an array of advanced voice, video and data services to consumers. Many more members are actively considering providing video over DSL or fiber in the near future.

OPASTCO urges the Commission to grant ACA's Petition. The Petition offers reasonable solutions for smaller video providers that face difficulty obtaining necessary programming. Additionally, the provision of video as part of bundled "triple play" voice, broadband and video packages helps encourage the deployment of broadband in more rural areas.

## **II. ACA'S PETITION SHOULD BE GRANTED, AS IT DEMONSTRATES THAT SMALLER VIDEO PROVIDERS SHOULD HAVE ACCESS TO NETWORK CONTENT FROM ALTERNATIVE SOURCES IF THEIR CURRENT PROVIDER DEMANDS ADDITIONAL PAYMENTS**

Under current rules, broadcasters can insist on payments for retransmission consent that have the potential to quickly become debilitating for many smaller video providers.<sup>3</sup> At the same time, current rules also allow broadcasters to block access to lower cost substitute sources of programming, permitting no alternative for numerous smaller video providers.<sup>4</sup> Absent changes to the current regime, marketplace forces will have no bearing on prices demanded by broadcasters for retransmission consent.

---

<sup>3</sup> *Ibid.*, pp. 1-2; 24-25.

<sup>4</sup> *Id.*, pp. 6-12.

Broadcasters presently have insufficient incentive to provide retransmission consent at rates that smaller video providers and their customers can afford.

ACA's Petition proposes to resolve this situation through a modest alteration of the rules that would apply only in circumstances where smaller video providers and their customers face the most harm. Specifically, ACA seeks to permit smaller video providers to acquire content from alternative sources, but only when broadcasters choose to require additional cash payments or other consideration in exchange for retransmission consent.<sup>5</sup>

The Petition does not seek to ban cash payment or other consideration in exchange for retransmission consent. Rather, if broadcasters exercise their right to be compensated for retransmission consent, then smaller video providers should have a corresponding right to seek content from alternative sources under more reasonable terms. This option still preserves broadcast exclusivity<sup>6</sup> for those broadcasters that desire to retain it.<sup>7</sup>

The Petition does not seek price-setting by the government. The proposed solution would allow the marketplace, rather than any one entity, to determine what price small video providers should pay for content if their original supplier chooses to require additional payment for retransmission consent. The Petition merely seeks "to remove artificial barriers to market 'pricing' of retransmission consent" for smaller video providers.<sup>8</sup> The Petition's proposals will help protect consumers from rate shocks necessitated by sudden spikes in costs associated with obtaining retransmission consent.

---

<sup>5</sup> *Id.*, p. 33.

<sup>6</sup> Broadcast exclusivity reserves network content for a single broadcaster in a given market.

<sup>7</sup> Petition, pp. 6-12

Further, by reducing the ability of broadcasters to extract unwarranted prices for content, ACA's proposals will help encourage more rural carriers to enter the video market using technologies such as DSL and fiber. The entrance of rural carriers into the video market not only provides consumer benefits through increased choices, but also spurs the goal of increasing the availability of broadband in rural areas as discussed in section III below.

The Petition notes that the current rules were established due to a perceived threat from cable that the Commission feared might harm the viability of the local broadcast industry. The Petition correctly points out that smaller video providers no longer pose such a threat, if they ever did to begin with.<sup>9</sup> Moreover, current circumstances illustrate that the reverse is now true; broadcasters' retransmission consent demands can imperil the viability of smaller video providers.<sup>10</sup> Therefore, the limited alteration of Commission rules proposed by ACA is warranted. While granting the Petition would not resolve all of the content acquisition challenges experienced by smaller video providers, it would represent a reasonable and important first step towards helping rural consumers preserve their ability to obtain video content from these carriers.

### **III. GRANTING THE PETITION WILL ENHANCE ACCESS TO AFFORDABLE VIDEO CONTENT, WHICH ENCOURAGES FURTHER INVESTMENT IN BROADBAND FACILITIES IN RURAL AREAS**

As OPASTCO has discussed in previous proceedings, access to affordable video content under reasonable terms and conditions is essential to extending the provision of broadband service to more rural consumers.<sup>11</sup> An OPASTCO *ex parte* presentation,

---

<sup>8</sup> *Id.*, p. 33-35.

<sup>9</sup> *Id.*, pp. 6-12; 21-23; 33-34.

<sup>10</sup> *Id.*, 24-25.

<sup>11</sup> See, OPASTCO Reply Comments, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, Notice of Inquiry, FCC 04-136 (fil. Aug. 25<sup>th</sup>, 2004); OPASTCO Reply Comments, *A La Carte and Themed Tier Programming and Pricing Options for*

made to both the Wireline Competition Bureau and the Media Bureau, examined the increasingly important link between the provision of video services and the deployment of broadband-capable infrastructure.<sup>12</sup> The *ex parte* is provided as an Attachment to these comments.

Although broadband deployment is a risky venture in high-cost rural areas, an OPASTCO survey revealed that on average, OPASTCO members have made broadband available to 88 percent of their customer base.<sup>13</sup> While this level of deployment represents remarkable success, OPASTCO members strive to make broadband available to as many consumers as possible, and to increase broadband penetration. The delivery of video services by rural telephone companies helps achieve these goals.

The OPASTCO survey showed that broadband penetration rates rose when other services, such as video, were bundled with it. Specifically, stand-alone broadband had penetration rates of only 10 percent, compared to 17 percent when bundled with other offerings like video.<sup>14</sup> Thus, the provision of video services by rural carriers, when bundled with broadband, encourages investment in the infrastructure necessary to deploy advanced services to more consumers. It follows, then, that rules impeding access to affordable video content for rural carriers constitute the kind of barrier to investment in

---

*Programming Distribution on Cable Television and Direct Broadcast Satellite Systems*, MB Docket No. 04-207, Public Notice, DA 04-1454 (fil. August 13<sup>th</sup>, 2004); OPASTCO Comments, *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 04-54, Notice of Inquiry, FCC 04-55 (fil. May 10, 2004) (NOI Comments).

<sup>12</sup> OPASTCO *ex parte* presentation, “The Video-Broadband Link,” *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, GN Docket No. 04-54; *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227; *et. al.* (fil. Nov. 10, 2004).

<sup>13</sup> NOI Comments, p. 3.

<sup>14</sup> *Id.*, p. 4.

broadband-capable infrastructure that section 706 of the Telecommunications Act of 1996 requires the Commission to remove. Because video deployment helps more rural consumers gain access to broadband, and helps the Commission achieve the goals of section 706, OPASTCO urges the Commission to grant ACA's Petition.

#### **IV. CONCLUSION**

ACA's Petition accurately portrays the problems faced by smaller video providers regarding the prices charged for retransmission consent, while offering modest, flexible solutions to these problems. Although the solutions proposed by the Petition do not address all obstacles that rural carriers must overcome to obtain video content, they would represent a step in the right direction. There is an increasingly important link between achieving universal broadband deployment in rural areas, and the ability of rural telephone companies to successfully provide video services. The Commission should therefore grant ACA's Petition.

Respectfully submitted,

**THE ORGANIZATION FOR THE PROMOTION  
AND ADVANCEMENT OF SMALL  
TELECOMMUNICATIONS COMPANIES**

By: /s/ Stuart Polikoff  
Stuart Polikoff  
Director of Government Relations

By: /s/ Stephen Pastorkovich  
Stephen Pastorkovich  
Business Development Director/  
Senior Policy Analyst

21 Dupont Circle, NW  
Suite 700  
Washington, DC 20036

(202) 659-5990

April 18, 2005

**Certificate of Service**

I, Stephen F. Pastorkovich, hereby certify that copies of OPASTCO's comments were sent on this, the 18th day of April, 2005 by first class United States mail, postage prepaid, or via electronic mail, to those listed below.

/s/ Stephen F. Pastorkovich

Stephen F. Pastorkovich

**Service List**  
**RM 11203**

Matthew M. Polka  
President & CEO  
American Cable Association  
One Parkway Center  
Suite 212  
Pittsburgh, PA 15220

Christopher C. Cinnamon  
Emily A. Denney  
Nicole E. Paolini  
Ly S. Chhay  
Cinnamon Mueller  
307 North Michigan Avenue  
Suite 1020  
Chicago, IL 60601

**ATTACHMENT**

**OPASTCO *EX PARTE* PRESENTATION:  
THE VIDEO-BROADBAND LINK**



**OPASTCO**

21 Dupont Circle NW  
Suite 700  
Washington, DC 20036

November 10, 2004

Marlene H. Dortch, Secretary  
Federal Communications Commission, Office of the Secretary  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

***Ex Parte* Notice**

**RE: In the Matters of:**

**Inquiry Concerning the Deployment of Advanced Telecommunications  
Capability to All Americans in a Reasonable and Timely Fashion, and Possible  
Steps to Accelerate Such Deployment Pursuant to Section 706 of the  
Telecommunications Act of 1996  
GN Docket No. 04-54**

**Annual Assessment of the Status of Competition in the Market for the Delivery  
of Video Programming  
MB Docket No. 04-227**

**A La Carte and Themed Tier Programming and Pricing Options for  
Programming Distribution on Cable Television and Direct Broadcast Satellite  
Systems  
MB Docket No. 04-207**

**Local Telephone Competition and Broadband Reporting  
WC Docket No. 04-141**

**Local Competition and Broadband Reporting  
CC Docket No. 99-301**

Dear Ms. Dortch:

On November 8, 2004, Allen Hoopes of Silver Star Communications, David Irwin of Irwin, Campbell & Tannenwald, PC, Howard Shapiro of Bennet & Bennet, PLLC, and Stephen Pastorkovich from the Organization for the Promotion and Advancement of Small

Telecommunications Companies (OPASTCO), met with Peggy Greene, Wayne McKee, John Kiefer, Alison Greenwald, Mike Lance, Priscilla Lee, John Norton, and William Johnson of the Media Bureau; and with Cathy Carpino, Regina Brown, and Narda Jones of the Wireline Competition Bureau.

Commission staff were provided with the attached OPASTCO presentation, which outlines the link between video services and the deployment of broadband in rural areas. The presentation notes that continued broadband deployment in rural areas is a Congressionally-mandated policy goal. While rural local exchange carriers (LECs) have overcome many obstacles to deploying broadband services, many have found that the task is more achievable when broadband offerings are bundled with video services. However, rural LECs encounter significant obstacles to obtaining necessary video content. Specifically, discriminatory costs, punitive retransmission consent arrangements, anti-competitive pricing, and needless data compression restrictions have all impeded rural LEC entry into the video market. Onerous broadband reporting requirements also can impede the delivery of advanced services to rural consumers.

OPASTCO urged the Commission to discourage or prohibit the actions described above. By so doing, the Commission would encourage additional entry into the video market by rural LECs. This would result in more consumer choice, and reduced barriers to investment in broadband-capable infrastructure as called for by section 706 of the 1996 Telecommunications Act. In accordance with Commission rules, this notice and the attached presentation are being filed electronically in the above-captioned dockets.

Sincerely,

/s/ Stephen Pastorkovich

Stephen Pastorkovich

Director of Business Development/

Senior Policy Analyst

OPASTCO

cc: Peggy Greene, Media Bureau  
Wayne McKee, Media Bureau  
John Kiefer, Media Bureau  
Alison Greenwald, Media Bureau  
Mike Lance, Media Bureau  
Priscilla Lee, Media Bureau  
John Norton, Media Bureau  
William Johnson, Media Bureau  
Cathy Carpino, Wireline Competition Bureau  
Regina Brown, Wireline Competition Bureau  
Narda Jones, Wireline Competition Bureau  
Allen Hoopes, Silver Star Communication  
David Irwin, Irwin, Campbell & Tannenwald, P.C.  
Howard Shapiro, Bennet & Bennet, PLLC



**O P A S T C O**

**Organization for the Promotion and Advancement of  
Small Telecommunications Companies**

**The Video-Broadband Link**

**Presentation to the Wireline Competition Bureau and Media Bureau  
November 8, 2004**

## ***ABSTRACT***

---

Increased broadband deployment is a common goal shared by policymakers and industry. Despite many obstacles, notably higher per-customer costs, most rural Local Exchange Carriers (LECs) have deployed broadband to a large portion of their customers.

Rural LECs have found that bundling broadband data services with video increases broadband “take rates” (penetration). This makes deployment of broadband to remaining customers more economically practical.

Rural LECs use increasingly diverse means to deliver broadband data and video services. However, access to content and other challenges are common problems for rural LECs that provide video services.

## ***ABOUT OPASTCO***

---

- OPASTCO is a national trade association of over 560 small, rural telecommunications carriers, including both commercial companies and co-operatives.
- OPASTCO members are “rural telephone companies” as defined in 47 U.S.C. §153(37).
- One half of OPASTCO members are also traditional cable companies.
- Over 90 percent of OPASTCO members serve as ISPs.
- Approximately 85 percent offer high-speed and broadband access.

## ***OPASTCO BROADBAND DEPLOYMENT***

---

As detailed in comments submitted in GN Docket No. 04-54 (filed May 10<sup>th</sup>, 2004), a survey of OPASTCO members revealed:

- On average, respondents can deliver broadband to 88 percent of customers; 55 percent of respondents can reach 95 percent of their customers, and 28 percent of respondents can reach their entire customer base.
- DSL is used by 99 percent of respondents. In addition, 20 percent also use unlicensed wireless, and 17 percent use coaxial cable. Fiber to the premises is used by seven percent of respondents. Seven percent also use satellite. Licensed wireless is used by four percent.

## ***OPASTCO BROADBAND DEPLOYMENT Cont.***

---

### **Rural LECs Face Broadband Competition:**

- Seventy seven percent of respondents face at least one broadband competitor. Two or more competitors are faced by 38 percent of respondents.

### **Bundling Increases Penetration:**

- The survey's average broadband penetration rate is 13 percent.
- Respondents that bundle broadband with other services average 17 percent penetration.
- Respondents that do not bundle average 10 percent penetration.

## ***RURAL LEC VIDEO SERVICES***

---

Industry changes are leading many more rural LECs to consider video entry. Video allows rural LECs to offer the triple play of voice, video and broadband, which leads to increased broadband penetration. There are anecdotal cases of “triple play” penetration rates of above 50 percent.

As filed in MB Docket No. 04-227 (OPASTCO Reply Comments, Aug. 25<sup>th</sup>, 2004), estimates from Viodi LLC reveal that:

- Up to 400 rural LECs provide video over varying platforms.
- Up to 120 rural LECs provide video over DSL.
- Up to 40 rural LECs provide video over fiber to the premises.

## ***OBSTACLES TO RURAL LEC VIDEO ENTRY***

---

OPASTCO Reply Comments in MB Docket No. 04-207 (filed August 13<sup>th</sup>, 2004) and in MB Docket No. 04-227 (filed August 25<sup>th</sup>, 2004) noted several barriers to entry into the video market faced by small LECS.

- **Discriminatory Cost Of Content:** Content providers appear to charge small companies more on a per-subscriber basis than large companies. However, restrictive non-disclosure provisions prevent accurate comparisons.
- **Punitive Retransmission Consent Agreements:** Content providers often force small companies to carry unwanted channels, or to insert certain channels in specific tiers. Rural providers should have the flexibility to craft tiers that meet the market demands of their small communities.

## ***OBSTACLES TO RURAL LEC VIDEO ENTRY Cont.***

---

- **Anti-Competitive Pricing:** Incidents have been reported where small LECs enter the video market in competition with a large provider. Claiming to conduct a “market test,” the large provider radically lowers rates, but only in the area where the LEC has entered. The complaint process is so onerous as to be of questionable utility.
- **Data Compression Restrictions:** Small LECs entering the video market using DSL technology are at times confronted with data compression restrictions from content providers. Ostensibly imposed for “picture quality” reasons, the restrictions have no technical basis. They appear to be imposed only to burden new entrants.

## ***WHAT THE COMMISSION CAN DO***

---

- Pre-empt non-disclosure terms for content, or at least conduct confidential reviews of rates charged to different providers.
- Require content providers to permit flexible tiering by rural carriers.
- Prohibit baseless “quality control” measures that discriminate against digital technology.
- Streamline the complaint process so that anti-competitive pricing can be effectively reported.
- Avoid imposing burdensome broadband reporting requirements on small LECs (per WC Docket No. 01-141, filed June 28<sup>th</sup>, 2004).

## ***CONCLUSION***

---

OPASTCO appreciates that both the Wireline Competition Bureau and the Media Bureau are working to find ways to reduce barriers to investment in broadband-capable infrastructure, as instructed by Congress in section 706 of the Telecommunications Act of 1996.

As technology converges, voice and video can be offered over the copper loop, coaxial cable, and fiber optics (in addition to wireless and broadband over power line platforms). OPASTCO stands ready to assist both Bureaus to account for how decisions in their respective dockets can impact rural LECs and their efforts to provide video and broadband services.